In the United States Patent and Trademark Office

In re the Application of:

Leland James Wiesehuegel	)	
Serial Number: 09/821,106	)	Group: 3624
Docket Number: AUS920010174US1	)	Examiner: James M. Alpert
Filed on: 03/29/2001	)	
For: "User-specified Time-based Proxy	)	
Firing in Online Auctions"	)	

REPLY BRIEF

Appellants wish to reply to certain arguments in the Examiner's Amendment dated 11/24/2006. Appellants maintain all other arguments made in the Appeal Brief.

Definition of Proxy Agent

In the response to the Appellants argument about the definition of a "proxy agent" on page 10 of the Examiner's Reply, it was stated that "the examiner has not asserted any particular meaning to the phrase 'proxy agent' ". However, this contradicts the statement made in the final Office Action, and quoted in the Examiner's Answer on page 4, first paragraph:

" . . . but a 'proxy agent' is literally a human being who physically locates himself at a live auction and bids in the stead of another. The Office cannot issue a patent on a human being."

Thus, in the final Office Action, the examiner did indeed assert a specific meaning for the term, and based the rejection under §101 rejection for being directed towards a non-statutory art (e.g. humans can't be patented).

In the Examiner's Answer, however, the examiner has entered at least two definitions (see Microsoft Computer Dictionary) in which the terms "proxy" and "agent" are computer-based devices. This seems to Appellants to contradict the Examiner's own argument - certainly, in view of even these additional definitions, there are some meanings of the term "proxy agent" which do not encompass humans. Further, when the term is limited by the elements, steps, and

limitations of the claims, there is no question whether the claims are directed towards humans or machines, devices, and processes.

For these reasons, including the Examiner's own stipulation that 'proxy' and 'agent' can mean non-human art, the rejections should be reversed.

The examiner further challenged Appellants to offer more extrinsic evidence of the meaning of "proxy agent" which are not human. A search on the Google search engine, for example, reveals (a) a computer virus named "Proxy-agent", (b) a "proxy agent" element of Simple Network Management Protocol ("SNMP"); and (c) a socket proxy agent component of JADE (JAVA Agent Development Framework).

Therefore, use of the term "proxy agent" as a computer component, program, or other non-human system or machine is not unusual or confusing. Appellants request the claims to be examined in light of the specification and using definitions drawn from the relevant arts for the invention. For these additional reasons, these rejections should be reversed.

"Time to Close" Delay and Acceptance Delay versus "Counter Bid Delay"

With respect to Montgomery's "time to close" delay, this delay is computed based on a value relative to the end of an auction period, but not relative to a previous time of bid placement (e.g. Appellants "time of placement of said current bid"). While Montgomery's "time to close" delay can delay submission of a bid, it does so in under a different timing using different logic, and therefore does not perform the function or the timing of Appellants' counter bid delay.

For these reasons, these rejections should be reversed.

With respect to Dinwoodie's delay to *accept* bids, the examiner has agreed that there is a difference with Appellants' counter bid delay, but has argued that it is a difference merely of perspective - server perspective versus client perspective - and this has not patentability merit.

Appellants agree that there is a difference, but argue that it provides a patentable distinction over Dinwoodie.

Consider that Dinwoodie's delay was meant to keep a server from being overrun by bids, so it is a control from a server perspective. Accordingly, one would imagine that this delay would be administered and controlled by the auction server owner or operator, and that individuals participating in online auctions would not be allowed to change this setting. Else, auction participants (e.g. bidders) may change the setting and cause the system to be overrun.

Appellants' counter bid delay, however, is not meant to prevent a server from being overrun, but instead to give the user of the proxy agent the ability to control the pace of bids being placed into an auction on his or her behalf. To be useful, this would be under the control of the user/bidder, and not under the control of the owner/operator of the auction server.

The Examiner might argue that Appellants have not claimed that the bidder/user is under control of these parameters. But, this is not true, whereas the difference between "placing" a bid (e.g. submitting a bid to an auction) is sufficient to avoid reading on "accepting" a bid (e.g. receiving a bid into an auction system).

So, Appellants agree with examiner that Dinwoodie's acceptance delay parameter is not the same as Appellants' counter bid delay parameter, and Appellants agree that there is a difference in perspective. But, Appellants argue that this is a patentable distinction, whereas the functionality is different, and the objects of the inventions are different.

For these reasons, Appellants request reversal of all rejections and allowance of all claims.

Respectfully,

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